IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 24019 of 2001

Between:

The Prakasam District Co-op. Central Bank Limited
No.J.551,Central Office at Governor Road Ongole 523 001, A.P
Rep. by its General Manager.

PETITIONER

AND

1 Government of Andhra Pradesh rep.by its Transaction and Legal Advisor Implementation Secretariat Public Enterprises Dept., "B" Block,3rd Floor, A.P. Secretariat, Hyderabad.
2 The Director Handlooms and Textiles, A.P Hyderabad.
3 The Secretary Industries and Commerce Department,
Govt. of A.P A.P.Secretariat, Saifabad Hyderabad-500 002.
4 The Parchur Cotton Growers Co-operative Spinning Mills Limited,
Inkollu Andhra Pradesh.
5 Industrial Development Bank of India Ltd., rep. by its Dy. General Manager, 5-9-89/1&2 Chapel Road, PB No. 370, Hyderabad, R5 is impleaded as per court order dt. 8-4-2005 in WPMP 7927 OF 2005.
6 ICICI Bank Ltd., ICICI Bank Tower, Level IV, 1-11-256, Begumpet, Hyderabad, rep. by Its Chief Manager, V.V.S.N. Raju S/o. V. Ramachandra Raju, R/o. Hyderabad.
R6 is impleaded as per court order dt. 10-6-2005 in WPMP 10462 of 2005

RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or orders more particularly one in the nature of the Writ of Mandamus declaring the action of the respondent No.1 to 3 in putting the Parachur Cotton Growers Co-operative Spinning Mills,Inkollu,Prakasam Dist, on sale under notification published in Eenadu, dt.29-9-2001 after prohibiting the petitioner from proceeding against the assets to recover its dues of Rs.5,48,49,478.20ps plus interest thereon and without taking any decision to transfer the sale proceeds to the petitioner bank as arbitrary,illegal and violative of fundamental rights guranteed to the petitioner bank under article 14, 19(1) (g) and 300(A) of Constitution of India and

direct the respondents No.1 to 3 to deposit the entire sale proceeds after the sale of the mill with the petitioner bank towards partial or full discharge of the liability of the respondent No.4 as per the recovery certificate issued in Case No.694/99-2000 or pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR.DEEPAK BHATTACHARJEE

Counsel for the Respondents.: THE ADVOCATE GENERAL

The Court made the following :

ORDER:

This writ petition has been filed by the Prakasham District Co-operative Central Bank Ltd., represented by its General Manager with a prayer to issue an order more particularly one in the nature of writ of mandamus directing the respondents to release the entire sale proceeds.

The General Manger of the writ petitioner Bank has given his sworn affidavit in support of the writ petition.

It is averred in the affidavit that the Parchur Cotton Growers Co-op. operative Spinning Mills, Inkollu-4th respondent availed working capital limit from the writ petitioner-bank in the year 1992. The limits were renewed in the year 1997. The liability of the 4th respondent to the petitioner-bank was Rs.5,48,49,478-20ps under various limits. The petitioner Bank initiated the appropriate proceedings under section 71 of the A.P .Co-operative Societies Act in case No.694 of 1999-2000. The execution petition was filed to recover the aforesaid amount. The Industries and Commerce Department-3rd respondent under G.O.Ms.No.537 dated 11-09-2000 issued prohibitory order prohibiting the sale officer from taking any further action under the Industrial Employment (Standing Orders) Act, 1946. In view of the prohibitory orders, the petitioner Bank could not take any steps to realise its dues. While so, the Government of Andhra Pradesh-1st respondent issued a notification published in Eenadu dated 29-09-2001 calling the tenders for sale of the entire plant and machinery, land and building of the 4th respondent mill. The writ petitioner addressed a letter dated 06-10-2001 to the 1st respondent to settle the claim of the writ petitioner out of the sale proceeding of the mill. Hence, the writ

petition seeking a direction to the respondents 1 to 3 to release Rs.5,48,49,478-20ps.

Mr. M.Balaji representing on behalf of the Advocate General appearing on behalf of the respondents 1 to 3 submits that the issue in this writ petition is squarely covered by the Division Bench Judgment in W.P.No.1979 of 2002. A similar direction was sought for in W.P.No.1979 of 2002 by M/s Sri Susheel Cotton Corporation and others and on elaborate discussion of the rights of the parties therein, the Division Bench observed as follows:

> "We have already noticed the nature of relief granted by this Court to the writ petitioners. The petitioners right to participate in the enquiry before the sale proceeds are distributed is not taken away by the impugned legislation. The impugned legislation in no manner overrules the judgment which attained finality in between the parties. The sweep of legislation is not confined to the petitioners alone but uniformly applies to all creditors concerning the entire subject sought to be covered under the impugned legislation. The petitioners right to realize the amounts from out of the sale proceeds is in no manner taken away by the impugned legislation. The judgment in no manner declared the rights of the petitioners for realization of their money out of the sale proceeds in preference to the claim of the secured creditors. The impugned legislation, as a measure of legislative policy lays down priorities in distribution of the sale proceeds in which the expenses incurred for preservation and protection of the assets is placed on the top priority followed by dues payable to the secured creditors according to their rights and priorities inter se; dues payable to provident fund or other authorities which are protected under a statute by a charge on the assets. Even the share capital contributed by the Members of the Society is placed below the priorities referred to hereinabove. The object underlying the impugned provision is to provide rationale basis for distribution of the proceeds realized from the transfer of assets of the society concerned and its application in discharge of the liabilities. That by no stretch of imagination, the prioritization could be attacked as an irrational law. The impugned provision merely indicates the prioritization and in no manner deprives or puts an embargo on the rights of the petitioners to realize the amounts payable to them. It is nobody's case that the petitioners would not be paid their money from out of the proceeds realized from the sale of assets of the society even if the amounts are available for discharge of the liabilities of the society in order of priority."

This factual aspect has not been controverted by the learned counsel appearing for the petitioners. In view of the settled proposition of law in the above referred case, the prayer of the writ petitioners to direct the respondents 1 to 3 to release the entire sale proceeds in its favour cannot be considered.

In the result, the writ petition is devoid of merits and hence, it is hereby dismissed.

No costs.

Justice B.SESHASAYANA REDDY)

18th July, 2005.

Dvs

Copies to:

1. The General Manager. The Prakasam District Co-op. Central Bank Limited No.J.551, Central Office at Governor Road, Ongole 523 001, A.P.
2. The Transaction and Legal Advisor, Government of Andhra Pradesh,Implementation Secretariat Public Enterprises Dept., "B" Block,3rd Floor, A.P. Secretariat, Hyderabad.
3. The Director, Handlooms and Textiles, A.P Hyderabad.
3 The Secretary, Industries and Commerce Department, Govt. of A.P A.P.Secretariat, Saifabad Hyderabad-500 002.
4 The Parchur Cotton Growers Co-operative Spinning Mills Limited, Inkollu Andhra Pradesh.
5 Dy. General Manager, Industrial Development Bank of India Ltd., 5-9-89/1&2 Chapel Road, PB No. 370, Hyderabad,

R5 is impleaded as per court order dt. 8-4-2005 in WPMP 7927 OF 2005.

6 The Chief Manager, ICICI Bank Ltd., ICICI Bank Tower, Level IV, 1-11-256, Begumpet, Hyderabad,

R6 is impleaded as per court order dt. 10-6-2005 in WPMP 10462

of 2005

7. Two CCs to the Advocate General, High Court of A.P.,Hyderabad.

8. Two CD copies.

HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITON No.24019 OF 2001

18th July, 2005